



SB 240

Code of corporate responsibility

Introduced by Senator Christine Kaufmann

Summary of Comments from MSCPA Members

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I believe we should be against this bill. I don't see why the additional language and definition of director duties needs to be expanded. The prudent man rule already in law should be sufficient. Trying to tie directors to a larger macro economic picture is unnecessary and inappropriate.

Regarding SB 240 re: standards of conduct for the board of directors and officers of a corporation:

Why was this introduced?

If we applied this law to Montana Power and its fiasco, what would this bill have accomplished if it had been in force? The directors may have been hoodwinked. Or they shirked their responsibility and bought the sales pitch by Salomon Bros, that selling Montan Power assets was a great idea. The full story will only come out in court.

Does it shield the directors from litigation? I think not. There may be a lot more finger pointing.

Is the bill intended to hold the directors or officers accountable for securing environmental and economic impact statements, or force such statements be made before any major corporate decision? Does it add additional costs and slow decision-making? Probably. It could be applied to real estate developments, and any corporation.

The previous provision was pretty generic. An additional provision under Sec. 1 (2) is "operating with the mind-set that the decision will be public knowledge". The key word missing: ETHICAL.

Current law provides that directors and officers shall discharge their duties:

- (a) in good faith
- (b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances
- (c) in a manner the director/officer believes to be in the best interests of the corporation.

The proposed legislation would add 2 new parts:

- 1) In discharging duties the director/officer may in considering the best interests of the corporation, consider any of the following:
 - i. The interests of the corporation's shareholders, employees, customers, suppliers, and creditors
 - ii. The economy of the state and nation
 - iii. The impact of any action upon the communities in or near which the corporation's facilities or operations are located
 - iv. The long-term as well as the short-term interests of the corporation
 - v. Any other factors relevant to promoting or preserving public or community interests
- 2) In discharging duties a director/officer shall consider the impact of any action upon the public health, public safety and environment.

(emphasis added)

Thoughts for consideration:

- 1. This legislation is not needed. Current law adequately sets forth the responsibility of directors/officers in a manner easily adapted to any situation. There is nothing in the proposed listed items that should not already be included.
 - 2. In 2) (part (3) in the bill) what does "shall" mean? Is an entry in the minutes saying these items were considered adequate? How is it to be documented? Or is this a cause for litigation by parties who do not agree with a decision? Case in point in the public sector—should trees burned by fire be harvested by logging or be left for animal habitat.
 - 3. The uncertainty this bill creates does not encourage, it in fact discourages, business to locate or do business in Montana.
 - 4. Director's insurance is expensive and difficult to obtain. This bill may increase premiums for all businesses including non-profits.
 - 5. This legislation may be another factor to discourage qualified people from serving as directors—especially for non-profits.
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We should oppose this bill since it expands corporate director and officer responsibilities beyond the corporation and its shareholders. The results of this bill will chase business out of Montana and cause existing Montana businesses and nonprofits corporations to incur additional costs.

Section 1

(1)(a)—Corporate officers & directors already have a fiduciary responsibility to the shareholders

(2) “May”—this will change in some future year to “must” or “shall” or “will”

(2)(b)—How do you do this?

(2)(c)—What about an unprofitable business & shut down a business plant? Do we need to file our budget with the government?
